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APR 28 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

In re Application of: Baba, et al.
Application No. 10/766,802
Filed: January 30, 2004
For: METHOD, APPARATUS, AND
COMPUTER READABLE MEDIUM FOR
MANAGING MULTIPLE SYSTEM

DECISION ON PETITION
TO MAKE SPECIAL
(ACCELERATED EXAMINATION)
UNDER M.P.E.P. §708.02 (VIII)

This is a response to the petition filed 18 March 2005, under 37 C.F.R. §1.102(d) and M.P.E.P. §708.02 (VIII): Accelerated Examination, to make the above-identified application special.

The Petition is DISMISSED.

M.P.E.P. §708.02, Section VIII which sets out the prerequisites for a grantable petition for Accelerated Examination under 37 C.F.R. §1.102(d) states in relevant part:

A new application (one which has not received any examination by the examiner) may be granted special status provided that applicant (and this term includes applicant's attorney or agent) complies with each of the following items:

- (a) Submits a petition to make special accompanied by the fee set forth in 37 CFR 1.17(h);
- (b) Presents all claims directed to a single invention, or if the Office determines that all the claims presented are not obviously directed to a single invention, will make an election without traverse as a prerequisite to the grant of special status;
- (c) Submits a statement(s) that a pre-examination search was made, listing the field of search by class and subclass, publication, Chemical Abstracts, foreign patents, etc. The pre-examination search must be directed to the invention as claimed in the application for which special status is requested. A search made by a foreign patent office satisfies this requirement;
- (d) Submits one copy each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and
- (e) Submits a detailed discussion of the references, which discussion points out, with the particularity required by 37 CFR 1.111 (b) and (c), how the claimed subject matter is patentable over the references.

In those instances where the request for this special status does not meet all the prerequisites set forth above, applicant will be notified and the defects in the request will be stated. The application will remain in the status of a new application awaiting action in its regular turn. In those instances where a request is defective in one or more respects, applicant will be given one opportunity to perfect the request in a renewed petition to make special. If perfected, the request will then be granted. If not perfected in the first renewed petition, any additional renewed petitions to make special may or may not be considered at the discretion of the Technology Center (TC) Special Program Examiner.

The petition filed 18 March 2005 fails to adequately meet requirement (e) of the criteria set forth above. The discussion of the references does not point out with the particularity required by 37 CFR 1.111(b) and (c) how the claimed subject matter is patentable over the references. At least some of the limitations purporting to distinguish independent claims 2 and 8 from the references are not in these claims. For example, for each reference it is stated that the reference does not teach a first feature "wherein the living party computer (first computer) detects whether the execution of a replica corresponding to a volume has been completed in a disk device of the living party computer" or a second feature "wherein responsive to the result of the detection of whether the execution of a replica corresponding to a volume has been completed in the disk device, transmitting to a standby party computer (second computer) a notice for informing standby party computer that a volume identifier stored in the volume subject to the execution of the replica has been changed". However, claims 2 and 8 do not require a "replica" or the determination of whether the execution of such a replica "has been completed". Petitioner should ensure that the above discussion is directed to how the language of each of the independent claims is specifically distinguishable and patentable from each of the references provided in requirement (d) above.

Petition to Make Special **DISMISSED**.

Petitioner is given one opportunity to perfect the petition. Any request for reconsideration must be filed within TWO MONTHS of the mail date of this decision.

Until the renewed petition is submitted, the application will be returned to the examiner's docket to await treatment on the merits in the normal order of examination.

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